

(2020) 06 SHI CK 0189

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 529 Of 2018, 1721 Of 2019, 414, 663 Of 2020

Kavita Thakur

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 25-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304II

Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 — Section 3, 4, 6

Citation : (2020) 06 SHI CK 0189

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Anupinder Rohal, Ashok Sharma, Vikas Rathore, Vinod Thakur, Desh Raj Thakur, Bhupinder Thakur

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

CWPs No.529 of 2018, 1721 of 2019 and 663 of 2020.

1. Delinked.

CWP No. 414 of 2020.

The petitioner has filed the instant petition for grant of the following substantive reliefs:

"(i) That the husband of the petitioner may kindly be granted parole according to his entitlement as per rules.

(ii) That the letter dated 12.12.2018 (vide Annexure P-3) & letter dated 03.06.2019 (i.e. Annexure P-5) issued by the respondent No.2 may kindly be quashed and set-aside in the interest of justice."

2. The petitioner has sought grant of parole to her husband, who has been

convicted for an offence punishable under Section 302 IPC.

3. The only ground taken by the respondents for repeatedly rejecting the request of the petitioner for grant of parole to her husband is that even though the local Panchayat has no objection for grant of parole to the husband of the petitioner, but the local Police have not recommended the sanction of parole in view of the objection raised by the aggrieved party.

4. Now the moot question is whether the request for grant of parole cannot be accepted only on account of objection by the aggrieved party and on further apprehension that the same may also create law and order problem.

5. The issue is no longer *res integra* insofar as this Court is concerned and was recently considered by a Co-ordinate Bench of this Court in CMP No. 3970 of 2020 in CWP No. 2931 of 2019, titled 'Mrs. Har Dei versus State of Himachal Pradesh & others', decided on 03.06.2020, wherein like the present case, the request for grant of parole was being opposed by the respondents only on the ground that the offence committed was heinous one and in case the parole is granted, the same is likely to create law and order problem and lastly the grant of parole was also rejected as the family of the victim had objected for the same.

6. It was in this background that this Court held as under:

"2. Section 6 of the H.P. Good Conduct Prisoners (Temporary Release) Act, 1968, reads as follows:

"6. Prisoners not entitled to be released in certain cases .- Notwithstanding anything contained in sections 3 and 4, no prisoner shall be entitled to be released under this Act, if, on the report of the District Magistrate, the Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order."

3. Needless to say that as per Section 6, the release must not endanger the security of the State or maintenance of public order. However, the State did not place on record any such statement from the family of the victim. A mere report, without referring to the statements of those members of the victim's family who have objection to the release on parole, such bald objection cannot be a reason to deny parole. Even otherwise, the prisoner was convicted under Section 304- II of the Indian Penal Code and sentenced to a limited period of imprisonment which means that after completion of the awarded terms of imprisonment, he shall have to be released from prison. In such an eventuality, the convict would be at liberty to travel to his home. Resultantly, the objection of the victim's family must be considered keeping in view the holistic view of the matter and not on flimsy grounds.

4. In the present report filed by the District Magistrate, dated Mar 2, 2020, there is no supportive material to reject the claim. Consequently, this Court overrules the rejection of parole by the District Magistrate, Kullu, which was further noticed

by the Director General, Prisons & Correctional Services, HP, in his order dated May 28, 2020, and directs the concerned authority to release the convict on parole for a period of fourteen days, after taking requisite personal and surety bonds. The needful be done without waste of time. Ordered accordingly."

7. In the present case also, there is no material to support the claim drawn by the District Magistrate to repeatedly reject the request for grant of parole. Consequently, this Court is left with no other option, but to quash the letter dated 12.12.2018 (Annexure P-3) and letter dated 03.06.2019 (Annexure P-5). Ordered accordingly.

8. Accordingly, the present writ petition is allowed and the respondents are directed to release the convict (husband of the petitioner) on parole for a period of 14 days after taking requisite personal and surety bonds.

9. However, before parting, it is clarified that in case the convict violates or breaches any condition of parole order by threatening the family of the complainant or otherwise creating law and order problem, then it shall be a factor to cancel the parole so granted by this Court and shall also be a relevant factor for considering the future request of the convict made in this regard.

10. The writ petition is disposed of as aforesaid, leaving the parties to bear their own costs. Pending application(s), if any, also stand disposed of.

11. The Court Master to provide authenticated copy of the order to the learned counsel for the parties.